

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT AND APPELLEE, VS. FABIAN ARIAS, OBJECTOR AND APPELLANT.

G.R. No. 11419. January 30, 1917

Ponente: TORRES, J.

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TORRES, J.:

This appeal by bill of exceptions was taken by counsel for Fabian Arias from the judgment of August 24, 1914, in which the court ordered the cancellation of the Torrens title issued to the said Arias in case No. 303 and directed that he be given another in accordance-with the result of the cadastral survey made in case No. 8007.

As a result of the cadastral proceedings No. 8007 brought in the Court of First Instance of Iloilo, the interests of the appellant Fabian Arias and, among other persons, Maria Gay and Gregorio Montinola, were affected. Fabian Arias, in case No. 303 of the Court of Land Registration, was awarded a Torrens title to a parcel of real estate belonging to him; and Gregorio Montinola secured title to a parcel of real estate by a decree issued in case No. 1341. Maria Gay holds no title issued under the Land Registration Act. The plan Exhibit D, according to the report made by the surveyor Veal, found on page 745 of the record, shows that the parcel of land of which Fabian Arias is the exclusive owner by reason of the decree of registration issued to him in 1904, in case No. 303, is erroneous, inasmuch as a triangular portion situated to the north of the title 2-3, on the side next to Calle Iznart, is included in the lot 2-b that ought to belong to Maria Gay (see Veal's plan, record, p. 745) and that another triangle of Arias' land, indicated by the letters T-Y-C, is claimed by Gregorio Montinola as being included in his certificate of title obtained in case No. 1341 (see Pope's plan, record, p. 1645).

Consequently the court ordered the surveyor to amend the cadastral plan Exhibit D in such wise as to adjust these variations between the plans of the interested parties, the new survey to be made after notice should have been served on the parties affected, as provided by the Cadastral Act No. 2259. Pursuant to this order the surveyor Veal made the new survey in the presence of Fabian Arias, Maria Gay and Gregorio Montinola and other persons interested, all of whom assented to the subdivision made. Thereafter, as the technical plans of the titles secured in cases Nos. 303 and 1341 and the old plans of the other owners of the lands did not agree with that prepared for the cadastral survey making the subdivision necessary, the said surveyor recommended that the court issue new plans based on the subdivision made by him, in substitution of the technical plans issued in the cases Nos. 303, 1081, 1341 and 1350 (record, p. 745).

The chief of the surveying division of the Court of Land Registration also recommended that the plan secured by Arias' Torrens title (case No. 303) be corrected so that to agree with that drawn as a result of the cadastral survey. He called attention to the fact that the lines in (black) ink indicate the parcel registered in case No. 303, and those in red ink, lots Nos. 2 and 3 of the plan Exhibit D (record, p. 1068). The court, therefore, at the close of the trial, rendered the judgment aforementioned wherein he ordered Arias' Torrens title cancelled and another title issued that should accord with the plan Exhibit D.

From this judgment Arias appealed, for, as may be seen by the plans on file in the record, the area of the land that

belongs to him and which was recognized as his by the decree issued in case No. 303 of the Court of Land Registration was considerably reduced. From the western part of his land, facing Calle Iznart de Iloilo, the portion marked as lot 2-b was taken away, as was also a triangular piece on the north.

Notwithstanding that it was held in the judgment appealed from that the plan of the appellant Arias' land, attached to the record in case No. 303, is erroneous, yet the survey of this land and the verification of its area for the purpose of ascertaining whether it agreed with that of the appellant's said plan, according to his certificate of title (which survey was made by the surveyor of the Bureau of Lands, H. D. Pope, under authority of the court, record, p. 1645), shows that the appellant's plan attached to the record in case No. 303 is correct.

It was admitted by the parties and shown by the plans and other evidence taken at the trial, that Lot 3 of the cadastral survey as well also as lot 2-b and a triangular piece of land situated to the north and claimed by Gregorio Montinola, were all included in Fabian Arias' certificate of title. The decree of the Court of Land Registration, by which the appellant was awarded the piece of land included in the plan attached to the record in said case No. 303, was issued in 1904. Since that time he has continued to be the indisputable owner of this property and the said judgment is final and conclusive. There is no legal reason whatever to warrant the changing or alteration of a Torrens title so as to make it agree with a plan subsequently drawn, and if in applying the Cadastral Act it becomes necessary to issue new titles, these should include the entire area of the land which had previously been adjudicated to a holder of a certificate of title by Virtue of a decree of the Court of Land Registration.

It is to be noted that Gregorio Montinola claims the portion designated by the letters T-Y-C on the plan drawn by the surveyor Pope; this also belongs to Fabian Arias, and since the latter obtained a Torrens title before Montinola, he must be considered to be the absolute owner of the said land.

While surveyor Veal testified that the plan presented in evidence in case No. 303 was erroneous, because it did not agree with the plan that he had drawn (Exhibit D), another surveyor, H. D. Pope, stated that Arias' plan, filed in said case No. 303, is correct; and this divergence of opinion between two experts only goes to justify the respect which, pursuant to law, should be accorded the title obtained by appellant Arias, notwithstanding the report of the expert Veal appearing in the record of the proceedings of the cadastral survey and which cannot prevail over the said title.

In *The Government of the Philippine Islands vs. Caballero* (34 Phil. Rep., 540), a case which is on all fours with the case at bar, this court declared that it is unlawful to make any change in the title of a person holding his land under a Torrens title and laid down the following rule, found in the syllabus:

"A certificate of title to land made in accordance with the provisions of the Cadastral Act (No. 2259), issued to one holding a valid Torrens title for lands within the cadastral survey, must include all the land contained in the certificate of such Torrens title."

And, at the close of the reasoning contained in the decision cited, the court said:

"We see no reason why a part of the appellant's land, which is covered by a Torrens title, should be taken from her and given to someone else. It may be true that in administering the Cadastral Law it will be necessary to issue new certificates of title to these holding Torrens' titles for lands within the cadastral survey, but if this is done, the new certificate must cover all of the land contained in the old one."

In view of the provisions of section 38 of Act No. 496, section 11 of the Cadastral Act No. 2259 and of the decisions rendered in the cases of *Cuyugan and Lim Tuico vs. Sy Quia* (24 Phil. Rep., 567) and *Legarda and Prieto vs. Saleeby* (31 Phil. Rep., 590), the judgment appealed from is hereby set aside, the record will be remanded to the court from whence it came, together with a certified copy of this decision, in order that the judge

of first instance may, in a new trial, proceed to determine whether the description of Fabian Arias' land as shown in the record of the cadastral proceedings agrees with that given in the decree of registration issued in case No. 303 and in the title issued to appellant Arias by virtue of the said decree, and whether the description and plan of the said cadastral proceedings includes all of Arias' land described in the decree and Torrens title obtained by him in case No. 303; it is to be understood that under the law the plan presented by Arias in case No. 303 can be rectified only if it be found not to be in agreement with the title issued to him. So ordered.

Carson, Moreland, Trent, and Araullo, JJ., concur.

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